



## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337-TA-1227]**

**Certain Routers, Access Points, Controllers, Network Management Devices, Other Networking Products, and Hardware and Software Components Thereof; Commission Determination to Review in Part a Final Initial Determination Finding No Violation of Section 337 and, on Review, to Affirm the Finding of No Violation; Termination of the Investigation**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on December 7, 2021, finding no violation of section 337 in the above-referenced investigation and, on review, to affirm the finding of no violation. The investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 205-2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov). General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** On October 28, 2020, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on a complaint filed by Q3 Networking LLC of Frisco, Texas (“Q3”). 85 FR 68367-68 (Oct. 28, 2020). The complaint alleged a violation of section 337 in the importation into the United

States, the sale for importation, or the sale within the United States after importation of certain routers, access points, controllers, network management devices, other networking products, and hardware and software components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,609,677 (“the ’677 patent”); 7,895,305 (“the ’305 patent”); 8,797,853 (“the ’853 patent”); and 7,457,627 (“the ’627 patent”). The complaint also alleged the existence of a domestic industry. The notice of investigation named as respondents: CommScope Holding Company, Inc. of Hickory, North Carolina; CommScope, Inc. of Hickory, North Carolina; Arris US Holdings, Inc. of Suwanee, Georgia; Ruckus Wireless, Inc. of Sunnyvale, California; Hewlett Packard Enterprise Co. of Palo Alto, California; Aruba Networks, Inc. of Santa Clara, California; and Netgear, Inc. of San Jose, California (collectively, “Respondents”). *Id.* at 68368. The Commission’s Office of Unfair Import Investigations was not named as a party in this investigation. *Id.*

Subsequently, the Commission permitted complainant to amend the complaint and notice of investigation to correct the corporate name of respondent Aruba Networks, Inc. to respondent Aruba Networks, LLC. Order 15 (Mar. 5, 2021), *unreviewed by* Notice (Mar. 22, 2021). The Commission also partially terminated the investigation by withdrawal of the ’627 patent. Order No. 26 (July 1, 2021), *unreviewed by* Notice (Jul. 26, 2021).

On December 7, 2021, the ALJ issued the final ID in this investigation, holding that no violation of section 337 has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain routers, access points, controllers, network management devices, other networking products, and hardware and software components thereof by reason of infringement of claims 1–6 of the ’677 patent; claims

1 and 8 of the '305 patent; and claims 1–9 of the '853 patent.<sup>1</sup>

The ID found that the accused products do not infringe the asserted claims of any of the asserted patents. The ID also found that the domestic industry requirement (both technical and economic prongs) has not been satisfied with respect to the '853, '305, and '677 patents. The ID further found that it has not been shown by clear and convincing evidence that the asserted claims of the '853, '305, and '677 patents are invalid.

On December 20, 2021, Complainant Q3 filed a petition for review of various portions of the ID. Also, on December 20, 2021, Respondents filed a contingent petition for review of various portions of the ID. On December 28, 2021, both Respondents and Complainant filed replies in response to the petition for review and the contingent petition for review, respectively.

Having examined the record in this investigation, including the final ID, the petitions for review, and the responses thereto, the Commission has determined to review in part the ID (1) with respect to the economic prong of the domestic industry requirement, and on review, to take no position, and (2) in order to correct certain non-substantive citation errors pertaining to the ID's technical prong findings regarding the '305 patent, and on review, to correct those errors. Specifically, the Commission cites to the following questions and answers from RX-1210C on pages 166-73 of the ID: (i) Q/A 17 instead of Q/A 16 in the first full paragraph on page 166; (ii) Q/A 32 instead of Q/A 28 on lines 3 and 10 in the first full paragraph on page 167; (iii) Q/A 24 instead of Q/A 22 in the first paragraph on page 168; (iv) Q/A 25 instead of Q/A 23 in the second paragraph on page 168; (v) Q/A 26 instead of Q/A 24 in the first paragraph on page 169; (vi) Q/A 29 instead of Q/A 28 in the second paragraph on page 169; (vii) Q/A 21-27 & 29 instead of Q/A 19-25 on page 169; (viii) Q/A 33-35 instead of Q/A 29-32 and Q/A 35 instead of Q/A 31 in the first paragraph on page 170 of the ID; (ix) Q/A 35 instead of Q/A 29-32 in the second

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<sup>1</sup> By failing to assert that Respondents infringe claims 2–3, 5, 6, 9, and 11–14 of the '305 patent and claim 8 of the '677 patent in its prehearing and posthearing briefs Complainant abandoned the above-referenced claims under Ground Rule 7(c).

paragraph on page 170 of the ID; (x) Q/A 35-36 instead of Q/A 32 in the first paragraph on page 171 of the ID; (xi) Q/A 37 instead of Q/A 33 in the second paragraph on page 171 of the ID, in the first full paragraph on page 172 of the ID, and in the first paragraph of page 173; and (xii) Q/A 38-41 instead of Q/A 34-37 and Q/A 39 instead of Q/A 35 in the last paragraph on page 173. The Commission has determined not to review the remainder of the ID, including the ID's finding of no violation of section 337 in this investigation.<sup>2, 3</sup>

The investigation is hereby terminated.

The Commission vote for this determination took place on May 3, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: May 3, 2022.

**Lisa Barton,**

*Secretary to the Commission.*

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<sup>2</sup> With respect to the '853 patent, Vice Chair Stayin would review the ID's claim construction of the term "overall transmission capacity," and find the term should be given its plain and ordinary meaning. Nonetheless, Vice Chair Stayin agrees that even under this revised construction the accused products do not infringe the asserted claims of the '853 patent, and the domestic industry products do not practice the claims of the '853 patent, for many of the reasons articulated in the ID. Accordingly, he joins the Commission's decision to affirm the ID's findings of no violation as to the '853 patent.

<sup>3</sup> Chair Kearns and Vice Chair Stayin note that they do not read anything in the ID (*see, e.g.,* ID at 207 and 260-61) as foreclosing a finding of a violation of section 337, under appropriate facts, based on direct infringement by a respondent where the accused article is combined post-importation with other articles to infringe an asserted patent claim.